

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 04-126 (MJD)

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) **ORDER**
v.)
)
NATHAN JOHN MIKULAK,)
)
Defendant.)

Defendant Nathan John Mikulak, through counsel, moved pursuant to 28 U.S.C. § 2255, to vacate and correct his 180-month sentence, which was imposed pursuant to the Armed Career Criminal Act (ACCA). He argues that he no longer possesses the three predicate convictions required for enhanced sentencing under the ACCA because his 1997 Minnesota conviction for third degree arson does not qualify as a violent felony after the Supreme Court's decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and *Welch v. United States*, 136 S. Ct. 1257 (2016). The government agrees that the defendant's third degree arson conviction no longer qualifies as a violent felony and agrees that

Defendant's sentence should be vacated and that he should be resentenced under 18 U.S.C. § 924(a)(2) to a term of imprisonment of ten years.

Based on *Johnson*, the Court finds that Defendant no longer qualifies as an armed career criminal pursuant to 18 U.S.C. § 924(e).

Accordingly, **IT IS ORDERED:**

1. The Defendant's Section 2255 Motion to Vacate and Correct Sentence [Doc. No. 42] is GRANTED;
2. Judgment in the Criminal case is VACATED and the Defendant shall be resentenced as soon as reasonably practicable;
3. The Defendant shall remain in custody pending the resentencing hearing.

The Government shall issue a writ for his appearance at resentencing;

4. The U.S. Probation Office shall prepare a supplemental Presentence Investigation Report in advance of the resentencing hearing.

Dated: November 4, 2016

s/ Michael J. Davis
MICHAEL J. DAVIS
United States District Court